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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOSEPH P. CUVIELLO and DENIZ
13 BOLBOL, individually,

14 Plaintiffs,

15 v.

16 ROWELL RANCH RODEO, INC.;
17 HAYWARD AREA RECREATION AND
PARK DISTRICT; HAYWARD AREA
18 RECREATION AND PARK DISTRICT
PUBLIC SAFETY MANAGER/RANGER
19 KEVIN HART; ALAMEDA COUNTY
SHERIFF'S OFFICE; ALAMEDA COUNTY
20 DEPUTY SHERIFF JOSHUA MAYFIELD;
and DOES 1 and 2, in their individual and
official capacities, jointly and severally,
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22 Defendants.
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Case No. 3:23-cv-01652-VC

**DEFENDANTS COUNTY OF
ALAMEDA AND ALAMEDA COUNTY
DEPUTY SHERIFF JOSHUA
MAYFIELD'S TRIAL BRIEF RE:
SPECIFIC INTENT**

Action Filed: April 6, 2023
Trial Date: October 21, 2024

1 The Bane Act requires plaintiffs to establish that Dep. Joshua Mayfield had the *mens rea*
 2 of specific intent to violate their right to free speech. This requirement appears not only in CACI
 3 3066’s introductory paragraph (“defendant intentionally interred with plaintiff’s civil rights”), but
 4 is set forth as a necessary element that plaintiffs must prove (“2. That defendant intended to
 5 deprive plaintiffs of their enjoyment of the interests protected by the right”).

6 Plaintiff Cuvillo (pro se) and plaintiff Bolbol’s counsel have adamantly taken the
 7 opposite position: that a Bane Act claim does *not* require proof of specific intent. The parties’
 8 proposed Jury Instructions and Verdict Forms therefor differ considerably on this crucial point,
 9 and this issue will need to be decided by the Court.

10 Defendant County of Alameda and Dep. Joshua Mayfield accordingly submit this trial
 11 brief on the specific intent element of a Bane Act claim for the Court’s consideration.

12 **I. CACI 3066 Requires Plaintiffs to Prove Intent**

13 CACI 3066 explicitly requires that plaintiffs prove intent. The introductory paragraph¹
 14 explains to the jury that “Plaintiffs claim that Dep. Josh Mayfield *intentionally interfered with*
 15 plaintiffs civil rights by threats, intimidation, or coercion.” (Emphasis added.) The CACI then
 16 makes the intent requirement a necessary element of this claim: “To establish this claim, plaintiffs
 17 must prove ...: 2. That Dep. Mayfield *intended to deprive* plaintiffs of their enjoyment of the
 18 interests protected by the right to free speech.” (Emphasis added.)

19 Subsequent California case law explains why the Legislature requires plaintiffs to prove
 20 intent in a Bane Act claim (whereas, for example, the intent element is absent in a negligence
 21 claim); and that the level of intent that plaintiffs must prove is *specific* intent.

22 **II. Controlling California Appellate Case Law Requires that Plaintiffs Establish That** 23 **Dep. Mayfield Had the Specific Intent to Violate Their Free Speech Rights**

24 The leading California Appellate Court opinion on the *mens rea* required to prove a
 25 violation of the Bane Act is *Cornell v. City and County of San Francisco*, 17 Cal.App.5th 766
 26 (2017) (“*Cornell*”). Following from its close analysis of the statutory language on a number of
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28 ¹ Revised only to fit the facts of this case.

1 issues, the Court held that, “The statutory phrase ‘threat, intimidation, or coercion’ serves as an
 2 aggravator justifying that the underlying violation of civil rights is sufficiently egregious to
 3 warrant *enhanced statutory remedies*.” (*Cornell* at 801 [emphasis added].) Based on this, the
 4 Cornell Court stated that:

5 Accordingly, we hold that ... the egregiousness required by Section 52.1 is tested
 6 by whether the circumstances indicate the arresting officer had a *specific intent to*
 7 *violate* [the relevant constitutional or statutory right relied on by plaintiff].

8 *Id.* at 801-802 (emphasis added). This was because California Legislature intended that in
 9 order for plaintiff to be awarded “enhanced statutory remedies,” in addition to whatever “actual”
 10 damages he or she suffered, plaintiff must meet the higher burden of proving specific intent.
 11 (*Ibid.*) Put differently, the statute was meant “to address interference with constitutional rights
 12 involving more egregious conduct than mere negligence,” which does not have a *mens rea*
 13 element at all. *Id.* at 796. Plaintiffs here claim not only the enhance statutory damages allowed by
 14 the Bane Act even in the absence of actual harm, but plaintiff Bolbol also claims substantial
 15 attorney’s fees. Neither of these would be allowed in a negligence action, where plaintiffs would
 16 have to prove harm and causation. The *Cornell* holding guarantees that if plaintiffs wish to obtain
 17 these enhanced damages and attorney’s fees, based on Dep. Mayfield’s mere *words* to them,
 18 something more than a mere violation of the negligence standard is required.

19 The specific intent requirement is the same as that set forth in *Screws v. United States*
 20 (1945) 325 U.S. 91. *Id.* at 802. “The *Screws* specific intent standard has been an established
 21 feature of federal civil rights law under Section 241 [criminal conspiracy against rights] since the
 22 mid-1960s.” *Ibid.* This conclusion, the *Cornell* court further found, is bolstered by the fact that
 23 “so much of the text and structure of Section 52.1 appears to descend from Section 241.” *Ibid.*
 24 While noting the differences between Section 241 and 52.1, including as to the burden of proof in
 25 the criminal statute, the Court saw no difference why the applicable *mens rea* element ought to
 26 differ.” *Ibid.* “Application of the *Screws* specific intent standard” will often be “straightforward.”
 27 *Id.* at 803. The finder of fact will simply ask, “Did the defendant commit the act in question with
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1 the particular purpose of depriving the citizen victim of his enjoyment of the interests protected
2 by that ... right.” Ibid.

3 The specific intent requirement, however, does not require that the defendant “recognize
4 the unlawfulness of his act.” Ibid. (internal quotation marks and citation omitted). Rather,
5 defendant will have acted with the requisite specific intent if they acted “in reckless disregard of
6 constitutional ... prohibitions or guarantees.” Ibid. (internal quotation marks and citation
7 omitted).

8 Subsequent California Courts of Appeal opinions have confirmed that *Cornell* was rightly
9 decided. See *B.B. v. County of Los Angeles*, 25 Cal.App.5th 115, 133 (2018) (judgment reversed
10 on other grounds at *B.B. v. County of Los Angeles* 10 Cal.5th 1, 2020) (“to establish liability
11 under the Bane Act, a plaintiff must prove the defendant acted with a specific intent to violate the
12 plaintiff’s civil rights,” citing *Cornell*; see also *Sherman v. Bryant*, 2020 WL 6798809 at *9
13 (same).

14 **III. The Ninth Circuit Also Requires Proof of Specific Intent in a Bane Act Claim**

15 Following *Cornell*, the Ninth Circuit has held that “the Bane Act requires ‘a specific
16 intent’ to violate” plaintiff’s constitutional rights. *Reese v. County of Sacramento*, 888 F.3d 1030,
17 1043 (9th Cir. 2018) (“*Reese*”), quoting *Cornell* at 384. The *Reese* court noted its “obligation to
18 consider the California Court of Appeal’s thorough analysis of its own law.” Ibid. It further noted
19 that, “We see no convincing evidence that the state’s supreme court likely would not follow
20 *Cornell* in reaching [this conclusion].” Ibid (internal quotation marks and citation omitted).

21 Subsequent Ninth Circuit case law has followed *Reese* and *Cornell* to require proof of
22 specific intent. See *Sandoval v. County of Sonoma*, 912 F.3d 509, 519-520 (9th Cir. 2018) (*Reese*
23 “substantially clarified the legal standard to be applied in a Bane Act claim” to require a finding
24 of specific intent); also *Hughes v. Rodriguez*, 31 F.4th 1211 (9th Cir. 2022), 1224 (Bane Act
25 requires that the defendant “had a ‘specific intent’ to violate a constitutional right,” quoting *Reese*
26 at 1043).

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IV. **The Directions for Use for CACI 3066 Incorrectly State the Law on Specific Intent, Apparently as a Result of Scribal Error**

The Directions for Use (“Directions”) for CACI 3066 incorrectly state the law as to specific intent in a Bane Act Claim – apparently as a result of a scribal error. The Directions state in full as follows:

Under the Unruh Act, **if only the statutory minimum damages of \$4,000 is sought, it is not necessary to prove *harm* and *causation*.** (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Section 52 provides for minimum statutory damages for every violation of section 51, regardless of the plaintiff’s actual damages]; see also Civ. Code, § 52(h) [“actual damages” means special and general damages].) Presumably, the same rule applies under the Bane Act as the statutory minimum of section 52(a) should be recoverable. **Therefore, omit elements 2 and 3 unless actual damages are sought.** (Emphasis added.)

The direction to omit elements 2 (“intended to deprive”) and 3 (“harmed”), while retaining element 4 (“substantial factor/causation”) does not make sense on its face, as a comparison of the two bolded phrases makes clear. The Direction must have intended to read “omit elements 3 and 4” if only statutory damages, not actual damages, are sought. This conclusion is further borne out by a review of CACI 3060 (Unruh Civil Rights Act), where the four instructions are structured similarly to CACI 3066 and, specifically, with the last two elements, elements 3. and 4., being identical: **3. That [name of plaintiff] was harmed; and 4. That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.** CACI 3060 and 3066.

The Directions for Use of CACI No. 3060 reads:

For an instruction on damages under the Unruh Act, see CACI No. 3067, Unruh Civil Rights Act - Damages. Note that the jury may award a successful plaintiff up to three times actual damages but not less than \$4,000 regardless of any actual damages. (Civ. Code, § 52(a).) **In this regard, harm is presumed, and elements 3 and 4 may be considered as established if no actual damages are sought.** (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Unruh Act violations are per se injurious]; Civ. Code, § 52(a) [provides for minimum statutory damages for every violation regardless of the plaintiff’s actual damages]; see also Civ. Code, § 52(h) [“actual damages” means special and general damages].) (Emphasis added.)

